

REMARKS

The present Amendment is in response to an Official Action mailed November 24, 2006. Claims 26 has been amended, claim 37 has been cancelled herein, and claims 27-30 have been previously canceled. Therefore, claims 26, 31-36, and 38 remain pending in the present application. The following sets forth Applicant's remarks in connection with the currently pending claims in the outstanding Action.

As an initial matter, Applicant respectfully thanks the Examiner for conducting the brief telephone interview of May 18, 2007 with Applicant's undersigned counsel. This discussion will be mentioned below in connection with each objection/rejection discussed herein.

In the Official Action, the Examiner first objected to claims 26 and 31-38 because claim 26 recites the limitation "central portion," without a similar element being recited in the specification. Specifically, while the Examiner noted that this limitation is supported by the drawings, the Examiner objected to each of the above-noted claims because, in his opinion, the written specification did not include any such language. As was mentioned to the Examiner in the aforementioned May 18th telephone interview, the specification, as filed, does in fact discuss "a central portion 14." See paragraph [0021]. In light of this Applicant respectfully requests removal of the objection set forth in the Action. It is noted that when this was mentioned in the May 18th telephone discussion, the Examiner indicated that a written notation, such as in the present response, should overcome this objection.

Further in the Official Action, the Examiner rejected claims 31-36 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In short, the Examiner noted term "about" as being

indefinite. However, in the May 18th telephone interview, the Examiner pointed out to Applicant's undersigned counsel that such term did not necessarily render the claims indefinite. Rather, the Examiner noted that inclusion of such term would likely result in more prior art being pertinent to each claim. As such, Applicant has not amended any of claims 31-36 in this regard. Should the Examiner feel the need to submit a similar rejection hereinafter, he is requested to contact Applicant's undersigned counsel directly prior to issuing any formal communication in the matter. At that time, Applicant may be willing to change the language accordingly.

Finally, the Examiner rejected claims 26 and 31-38 under 35 U.S.C. § 103(a) as being obvious in view of the combination of U.S. Patent Publication No. 2002/0016633 to Lin et al. ("Lin") and an article entitled "A New Modified Technique For Harvest of Calcaneal Bone Graft Surgery on the Foot and Ankle" written by Biddinger et al. ("Biddinger"). In the Official Action, the Examiner recited two interpretations about that which is disclosed in Lin. In the first interpretation, the Examiner alleged that Lin discloses an implant (10) of approximately 100 percent cancellous bone capable of being harvested from the calcaneus. Under the second interpretation, the Examiner alleged that Lin discloses an implant (both 612 and 614 together) having a thin cortical bone cortex (614) with a cancellous core (612) that can be harvested from the calcaneus. The Examiner also stated that cancellous bone described throughout the specification is discussed in relation to several different shapes being possible. Thus, the Examiner opined that this would inherently involve the use of at least several cuts in creating several subsections of which one would be used as an implant. In addition, the Examiner opined that the second interpretation of Lin would inherently be capable of supporting weights of up to 1000 pounds.

Nonetheless, the Examiner recognized that Lin fails to disclose the cuts to the calcaneus being in the donor, as well as being perpendicular to the long axis of the calcaneus. The Examiner utilized Biddinger as disclosing the lateral technique for retrieval of cancellous bone in order to avoid medical calcaneal branches of the tibial nerve. In this regard, the Examiner contended that it would have been obvious to one of ordinary skill in the art at the time of the invention to harvest the calcaneal bone from the lateral side (perpendicular to the long axis of the calcaneus) in order to avoid striking the calcaneal branches of the tibial nerve. In addition, the Examiner contended that it would also have been obvious to extract the calcaneal bone from a living donor of similar genetic composition in cases where the donor's own bone would be detrimental (severe arthritis, cancer, osteoporosis, general bone disease) and to reduce the likelihood of tissue rejection by subject's immune system. Thus, the Examiner utilized the combination of Lin and Biddinger to reject each of the previously pending claims.

In the present Amendment, Applicant has amended independent claim 26 to incorporate the subject matter he believes is not taught in Lin, Biddinger, or the combination of both. Specifically, independent claim 26 has been amended to require that each implant made during the cutting step include "a thin layer of critical bone formed integral and partially surrounding a core of cancellous bone." This is different than that which is taught in Lin, and in particular, in the Examiner's second interpretation of that reference relating to the embodiment of FIGS. 8A-8C of Lin. Lin clearly contemplates providing a cancellous bone central body 612 and a U-shaped cortical bone face 614, but only in a non-integral form. In fact, Lin discloses a retaining pin 620 in the embodiment shown in FIGS. 8A-8C for retaining central body 612 in u-shaped body

10. This is due to the fact that Lin clearly, by the Examiner's own admission, does not disclose or suggest making an lumbar or thoracic spinal implant in a similar fashion as the invention. Where the present invention performs specific method steps to form such implants from a calcaneus of a donor, Lin is silent on this issue. In fact, Applicant submits that the specific teaching shown in FIGS. 8A-8C of Lin would in fact teach away from taking the needed material from a calcaneus, as such would result in an integral interconnection between the cortical and cancellous bone material unlike the non-integral formation shown in those figures. Therefore, Applicant respectfully submits that the present amendments overcome the obviousness rejection set forth by the Examiner in the outstanding Action.

In light of the above, Applicant respectfully submits that independent claim 26 is allowable over the prior art of record. Although each and every one of dependent claims 31-36 and 38 are not specifically discussed herein, Applicant notes that such are also allowable based solely upon their proper dependency from independent claim 26. A dependent claim is necessarily narrower than an independent claim from which is properly depends. Therefore, Applicant respectfully requests allowance of each and every one of claims 26, 31-36, and 38.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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